

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

CARL REED,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 3:07-0765
)	Judge Trauger
YOUNG MEN’S CHRISTIAN ASSN. USA,)	Magistrate Judge Bryant
YMCA, YMCA OF MIDDLE TENNESSEE,)	
RUTHERFORD COUNTY YMCA,)	
RICK CANADA, in the official capacity as)	
Executive Director, Rutherford County YMCA,)	
and RUTHERFORD COUNTY SHERIFF’S)	
DEPARTMENT, individually and severally,)	
)	
Defendants.)	

MEMORANDUM and ORDER

On August 8, 2008, the Magistrate Judge issued a Report and Recommendation, recommending that this case be dismissed against remaining defendants YMCA of Middle Tennessee, Rutherford County YMCA, Rick Canada and Rutherford County Sheriff’s Department. (Docket No. 58) The plaintiff has filed a “Reply and Formal Objection” (Docket No. 60),¹ to which the defendants have responded (Docket Nos. 61, 64).

Because a ruling on a motion to dismiss relates to a dispositive matter, this court reviews *de novo* any portion of the Report and Recommendation to which a specific objection is made. Rule 72(b), FED.R.CIV.P.; 28 U.S.C. §636(b)(1)(C); *United States v. Curtis*, 237 F.3d 598, 603(6th Cir. 2001).

¹The court notes that, on October 14, 2008, the plaintiff faxed to Magistrate Judge Bryant and to counsel for the defendants a letter offering to settle this case in exchange for a “brief statement of apology on official letterhead . . . formally directed to me and my wife. . .”. (Docket No. 66) The court does not consider this document in any way an objection upon which it is required to rule.

The most serious objection lodged by the plaintiff is that he received the Magistrate Judge's Order to Show Cause (Docket No. 54) after the date on which he was to show cause, which was August 4, 2008. (Docket No. 60 at 4) In fact, the record shows that an unidentified "Agent" signed the return receipt for this Order on an unspecified date and mailed it back to the court on August 5, 2008. (Docket No. 56) Therefore, the plaintiff would have been unable to show cause by August 4, 2008, because he had not yet received the Order. For this reason, the court will construe the plaintiff's objection document as both an objection to the Report and Recommendation and as a substantive response to the Order to Show Cause.

The plaintiff's objection document contains numerous allegations of race discrimination occurring in Murfreesboro that have no relation to the claims in this lawsuit, and the court will not rule on those various allegations as if they were objections. Most pertinent to this lawsuit is the plaintiff's assertion that he was justified in refusing to be deposed on May 28, 2008 because Richard Canada was present, and the Magistrate Judge ruled by telephone conference that the plaintiff's companion, Constance Haliburton-Bryant, should have been allowed to attend the deposition. As the Magistrate Judge ruled at the time, these assertions are in error. Richard Canada is a named defendant in this lawsuit and is entitled to be present at all depositions taken in the case. Ms. Haliburton-Bryant, on the other hand, is not a party to the lawsuit and has no right to be present during depositions, if the defendants object to her presence, as they did. Therefore, the plaintiff unjustifiably refused to be deposed on May 28, 2008, an act justifying, in conjunction with the other bases for the motion to dismiss not objected to by the plaintiff, the sanction of dismissal.

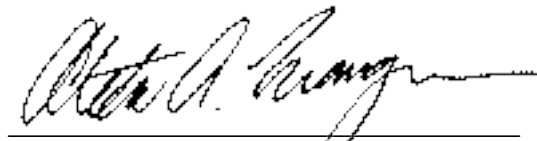
The other assertion made by the plaintiff in his objection document is that Magistrate Judge Bryant is biased and prejudiced against him and that, therefore, this case should be transferred to another Magistrate Judge. (Docket No. 60 at 4). In reviewing the actions of the Magistrate Judge

in this case, the court can find no basis substantiating this claim against the Magistrate Judge assigned to this case. Therefore, the objection on this ground, too, is without merit, and the request for reassignment is **DENIED**.

For the reasons expressed herein, the plaintiff's objections are **OVERRULED**, and the Report and Recommendation (Docket No. 58) is **ACCEPTED** and made the finding of facts and conclusions of law of this court. For the reasons expressed therein, the claims against the remaining four defendants are **DISMISSED**.

It is so **ORDERED**.

Enter this 29th day of October 2008.

A handwritten signature in black ink, appearing to read 'Aleta A. Trauger', is written over a horizontal line.

ALETA A. TRAUGER
U.S. District Judge